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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

MORAN, KATHERINE M

ART UNIT

PAPER NUMBER

3765

MAIL DATE

DELIVERY MODE

12/14/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/578,864	Applicant(s) LANG ET AL.	
	Examiner KATHERINE MORAN	Art Unit 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/10/10, 8/24/10.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 22-51 is/are pending in the application.
- 4a) Of the above claim(s) 33-50 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 22-32 and 51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 March 2010 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/21/10</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Applicant's responses of 8/24/10 and 9/10/10 have been received. Claims 1-9 and 22-30 were amended and new claims 31-51 were added. Claims 1-9 and 22-51 are pending. An IDS of 4/21/10 was also submitted.

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Newly submitted claims 33-50 are directed to an invention that lacks unity with the invention originally claimed for the following reasons: Claims 33, 41, and 50 lack unity with claims 1-9, 22-32, 42 and 51 in that claims 33, 41, and 50 recite a special feature (mask) which is lacking in the other groups and claims 34-40 and 42-49 lack unity with claims 1-9, 22-33, 41, 50, and 51 in that claims 34-40 and 42-49 recite a special feature (headband arrangement including a support structure) lacking in the other claims.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 33-50 are withdrawn from consideration as being directed to a nonelected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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3. Claims 8, 9, and 26-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 8 recites a slide element which can be brought in different closing positions on the locking structure. This recitation is unclear in that the structural relationship of the slide element and the headband arrangement, including the locking structure, is not set forth. It is unclear how the slide element is brought in different closing positions on the locking structure. Claim 26 recites the slide element structured to slidably engage the locking structure. Which part of the headband arrangement is the slide element coupled to? Claim 26 recites the slide element in a functional manner in relation to the locking structure.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 31, 32, and 51 are rejected under 35 U.S.C. 102(b) as being anticipated by Heine (U.S. 4,675,919). Heine discloses the invention as claimed. Heine teaches a headband arrangement 1 for applying to a breathing mask to a user and having a flexible band body 2 comprising upper and lower band portions for transmitting the mask holding forces required for applying the breathing mask wherein the upper and lower band portions are made of a foamed plastic material including molded foam. The

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upper and lower band portions include a pair of upper and lower band portions for transmitting the mask holding forces.

6. Claim 22 is under 35 U.S.C. 102(b) as being anticipated by Magidson '062. Magidson discloses the invention as claimed. Magidson teaches a headband arrangement 12 for a mask comprising an upper headband portion 16 adapted to transmit mask holding forces to an upper portion of the mask and a lower headband portion 16 adapted to transmit mask holding forces to a lower portion of the mask, at least one headband portion of the upper and lower headband portions including a longitudinal recess 18/20 and a mask connector in the form of an insert 22 embedded into the recess of the at least one headband portion, the connector structured to allow the mask to be attached to the headband arrangement in an adjustable manner. The upper headband portion is represented by one half of the band body and the lower headband portion is represented by the other half of the band body.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-7, 23-25, 29, 30, and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Magidson (U.S. 5,829,062) in view of Heine '919. Magidson discloses the invention as claimed. Magidson teaches a headband arrangement 12 for

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applying a breathing mask to a user and having a flexible band body 16 comprising upper and lower band portions for transmitting the mask holding forces required for applying the mask, wherein at least portions of the body are made of a plastic material. Regarding claim 2, "band body formed by injecting a pore-forming plastic material in a molding space of a tool" is a product by process limitation and as such, does not receive patentable weight in an apparatus claim. Magidson teaches a structurally equivalent headband means and the use of injection molding in column 2, lines 8-20. As discussed in MPEP 2113, when the product by process claim is limited by and defined by the process, determination of patentability is based on the product itself. The patentability of the product does not depend on its method of production. If the product in the product by process claim is the same or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. Therefore, only the claimed structure is considered when assessing patentability. The plastic material has a skin in the area of its outer surface in that the outer surface of the plastic acts as a covering to the inner plastic material. Insert 22 is embedded into a longitudinal recess 18/20 of the headband portion and the insert/connector includes a locking structure (shown in Figure 6 as those portions of the insert which are coextensive with the edge of, and uncovered by, the plastic material). The insert 22 is a dimensionally stable insert and the locking structure is structured to couple a band bracket portion in an adjustable manner and is structured to allow the mask to be attached to the headband arrangement in an adjustable manner. The locking structure is formed integrally with the plastic material. It is noted that the claim doesn't further discuss the

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features of the locking structure and therefore the uncovered locking structure is considered capable of receipt of a band bracket portion. However, Magidson doesn't teach the headband portion made of a foamed plastic material. Heine teaches headband portions 2 made of foam plastic. Heine describes the foam plastic as being soft and providing a cushioning effect. Therefore, it would have been obvious to one of ordinary skill in the art to substitute foamed plastic for the plastic used by Magidson in order to provide a softer interface against the wearer's head.

Response to Arguments

9. Regarding Magidson and Madaus, Applicant's argument drawn to applicability of the rejections under 35 USC 102(b) are persuasive and these rejections are withdrawn.

Allowable Subject Matter

10. Claims 8, 9, and 26-28 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

11. Any inquiry concerning this communication or earlier communications should be directed to Primary Examiner Katherine Moran at (571) 272-4990. The examiner can be reached on Monday-Thursday from 8:30 am to 6:00 pm, and alternating Fridays. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch, may be reached at (571) 272-4996. The official and after final fax number for the organization where this application is assigned is (571) 273-8300.

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General information regarding this application may be obtained by contacting the Group Receptionist at (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Katherine Moran/

Primary Examiner, AU 3765